

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

RION T. MacCONNELL, :  
  
Plaintiff, : Case No. 3:13cv00034  
  
vs. : District Judge Timothy S. Black  
Chief Magistrate Judge Sharon L. Ovington  
  
SHERIFF PHIL PLUMMER, et al., :  
  
Defendants. :

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**REPORT AND RECOMMENDATIONS<sup>1</sup>**

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Plaintiff Rion T. MacConnell proceeded *in forma pauperis* and *pro se* throughout this case in this Court. On November 27, 2013, the Court issued a Decision and Entry that (1) adopted several Reports and Recommendations (doc. #s 46, 47, 48); (2) granted Defendants' Motions to Dismiss; (3) denied Plaintiff's Motion to Amend as futile; (4) overruled Plaintiff's Objections; and (5) terminated the case on the Court's docket. (Doc. #52). The Clerk of Court entered Judgment against Plaintiff that same day.

The case is presently before the Court upon Plaintiff's Motion To Proceed In Forma Pauperis On Appeal (Doc. #54), his Notice Of Appeal (Doc. 55), and the record as a whole. Construing Plaintiffs' Notice of Appeal in his favor, he seeks to appeal the Decision and Entry issued on November 27, 2013 as well as the underlying Reports and

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<sup>1</sup> Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendations.

Recommendations.

Plaintiff's Motion For In Forma Pauperis Status, which he executed under the penalty of perjury, establishes that he lacks the financial wherewithal to pay the required appellate filing fee and to otherwise proceed on appeal. But, turning to the issues Plaintiff may seek to raise on appeal, his "appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. §1915(a)(3). "If the district court determines that ... the appeal is not taken in good faith, or that the individual is not otherwise entitled to pauper status, the district court must state its decision in writing, and then immediately notify the parties of its decision." *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999); *see* 28 U.S.C. §1915(a)(3).

For the reasons set forth in the three Report and Recommendations (Doc. #s 46, 47, 48) as previously adopted by the Court (Doc. #52), Plaintiff's appeal is not taken in good faith.

Accordingly, although Plaintiff is financially eligible to proceed in forma pauperis on appeal, his appeal is not taken in good faith.

**IT IS THEREFORE RECOMMENDED THAT:**

Plaintiff's Motion To Proceed In Forma Pauperis (Doc. #54) be DENIED and that the Court certify under 28 U.S.C. §1915(a)(3) that Plaintiff's appeal is not taken in good faith.

December 17, 2013

s/Sharon L. Ovington  
Sharon L. Ovington  
Chief United States Magistrate Judge

## NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to **SEVENTEEN** days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).